IN THE

Supreme Court of the United States

OCTOBER TERM, 1926

No. 236

INTERNATIONAL STEVEDORING COMPANY,
A CORPORATION, PETITIONER

against

R. HAVERTY, RESPONDENT.

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF WASHINGTON

BRIEF IN SUPPORT OF PETITION

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ARGUMENT

I.

THE OPINION OF THE COURT, IN CONSTRUING THE WORD "SEAMEN" TO INCLUDE STEVEDORES, OVERLOOKS THE CONTRARY CONSTRUCTION MADE BY CONGRESS ITSELF.

Seamen since the earliest times have been the subject of congressional legislation, and the La Follette Seamen's Act of 1915, (38 Stat. 1164-85) merely constituted another step in the legislation for the benefit of merchant seamen. Stevedores and other

maritime workers having fixed habitations on shore, were at that time regarded by all courts as subject to state compensation acts (see citations in dissenting opinion of Mr. Justice Holmes in *Southern Pacific v. Jensen*, 244 U. S. 205, 223). Then, on May 21, 1917 came the decision in *Southern Pacific Co. v. Jensen*, 244 U. S. 205, holding stevedores ineligible to protection under state compensation laws but subject to maritime jurisdiction exclusively. Faced for the first time, as the result of this epochal decision, with the necessity of giving statutory protection to stevedores and other maritime workers having fixed habitations on shore, Congress within a few months (October 6, 1917) passed the so-called Johnson Amendment (40 Stat. 395) to Sections 24 and 256 of the Judicial Code, adding to the saving clause therein the words "and to claimants the rights and remedies under the Workmen's Compensation Laws of any state". This law was designed to overcome the rule of the Jensen case and to give protection to stevedores and similarly situated landsmen engaged in maritime work.

With this law on the books designed to protect stevedores and other harbor workers by giving them swift and sure compensation under the Workmen's Compensation Acts of several states, Congress then undertook to protect seamen, and passed the Merchant Marine Act of 1920 (41 Stat. 1007), Section 33 being an amendment of Section 20 of La Follette Seamen's Act of 1915 relating to merchant seamen. At this point this court decided *Knickerbocker Ice Company v. Stewart*, 253 U. S. 149, holding invalid the amend-

ment of October 6, 1917 to protect stevedores. As the result of that decision Congress, which had attempted to take care of the needs of stevedores and seamen, respectively, in separate acts, thus found stevedores and other harbor workers again unprotected. In order to protect them Congress once more adopted an amendment to Sections 24 and 256 of the Judicial Code in the Act of June 10, 1922 (42 Stat. 634) by saving to "claimants for compensation for injuries to or death of persons *other than the master or members of a crew* of a vessel, their rights and remedies under the Workmen's Compensation Act of any State." Seamen were already included under the Merchant Marine Act of 1920, and therefore Congress took care to exclude them from the operation of the act of the amendment of June 10, 1922, which was designed to protect stevedores and other maritime workers. That this was the intention of Congress is not only apparent from the history of the acts and from their face, but is also specifically borne out by the reports of the house and senate judiciary committees respectively, relating to the act of June 10, 1922, which was S. 745.

The report (67th Congress 1st Session, Vol. 1, Report No. 94, dated June 6, 1921, Serial No. Vol. 7918) accompanying S. 745 and discussing the wide basic distinctions between seamen, on the one hand, and stevedore and other harbor workers, on the other hand, read in part as follows:

> "This bill is intended to meet the very serious situation which has arisen as the result of the decision of the Supreme Court that the Johnson

amendment, October 6, 1917, was unconstitutional. (*Knickerbocker Ice Co. v. Stewart*, 253 U. S. 149).

"There is a clear distinction between the two classes, seamen and landsmen, who work in and about ships.

"The special treatment which seamen have always had under the acts of Congress was recently emphasized by the provision of the Merchant Marine Act of 1920 extending to seamen, *but not to other maritime workers*, the same rights of recovery in the case of work accidents now enjoyed by interstate railway employees.

"The employer in the case of seamen is always the owner or charterer of the ship, and he has the use of the peculiar remedies of admiralty against the ship to recover his wages, or his damages under the maritime law in case of injury.

"*Longshoremen and ship repair men are land workers subject neither to the peculiar conditions nor to the laws which regulate seamen.* They form a part of the labor which is of each state exactly as other workmen in the port in which they are employed. They are not migratory but local; their wages, their conditions of living, are covered by local standards. They do not in all cases form a special class always employed in this work. *The peculiar maritime law applying to seamen is not applicable to their condition and no attempt has been made to apply it to them.* They do not share in the advantages of the United States Marine Hospital, nor are

their employers under any obligations to care for them in case of accident.

"Their employers furthermore are not usually ship owners. It is usual in the large ports for a local stevedoring firm to contract with the ship owner to loa dor unload his vessel and employ longshoremen who under his control handle the cargo.

"Repairs are usually done under contract with a local contractor, so that the men who are actually employed in doing the work have no direct relation with the ship or ship owner."

The report of the house judiciary committee (House report 67th Congress, second session, Vol. 1. Report No. 639, dated January 31, 1922. p. 4, Serial No. Vol. 7955) accompanying S. 745, reads as follows:

"This bill is intended to carry out what the committee believes, after careful consideration, to be the correct solution for the problems of providing compensation for port workers. Previous to the decision of the Supreme Court of the United States no difference had arisen on this head, and the courts and administrative authorities acted on the assumption that state laws could grant compensation to these as well as to other workers within the state (citing many cases).

"*Congress has always in legislating distinguished between these port workers and seamen.* It has assumed full control over the relations of master and servant at sea. Federal legislation determines the character of the quarters in which the crew is to be housed, the food

to be served them, hours of labor, and reciprocal duties of seamen and officers. * * * (recital of many other incidents of the peculiar seamen's relation). His right to recover damages was strictly limited by the law of the sea, but Congress in the Merchant Shipping Act of 1920 gave him a wide right to recover damages by putting him on the basis of employees of interstate commerce.

"Congress has hitherto left to state control the relation of employer and servant in longshore work or in ship repairs."

Both of these reports contain extended statements of the difference in situations between seamen and longshoremen, and point out that the intention of Congress, by reason of this difference of situations, was to legislate differently with respect to both. If the word "seamen" as used in the Merchant Marine Act of 1920 is open to construction at all, the reports of the committees of either branch of Congress may be examined with a view of determining the scope of the statutes passed on the strength of such reports.

Binns v. U. S., 194 U. S. 486;

McLean v. U. S., 226 U. S. 374;

Lapina v. Williams, 232 U. S. 78;

Knickerbocker Ice Co. v. Stewart, 253 U. S. 149, 162;

Hecht v. Malley, 265 U. S. 144, 152;

O'Hara v. Luckenbach SS. Co., U. S. Adv. Ops. 1925-6, p. 160.

Moreover, the debates in Congress while they may

not be resorted to for the purpose of interpretation, may be resorted to for the history of the acts in question.

Standard Oil Co. v. U. S., 221 U. S. 1.

And the history of the acts as set forth in the Congressional Record (Cong. Rec. May 26, 1922, p. 7754) shows that Congress had in mind the unprotected situation of stevedores resulting from the constitutional decision of this court relating to stevedores and other maritime workers not seamen.

The amendment of June 10, 1922 was also passed, just as the previous one, in order to give stevedores statutory protection, of which they had been deprived by the Knickerbocker Ice Co. decision; but this amendment was held invalid in *Washington v. Dawson & Company*, 264 U. S. 219; and thus the statute which Congress had designed to protect stevedores and all other maritime workers "other than master or members of a crew of a vessel" (who were already protected by the Merchant Marine Act of 1920) went into the discard, this Court saying:

> "Without doubt Congress has power to alter, amend, or revise the maritime law by statues of general application embodying its will and judgment. This power, we think, would permit enactment of a general employer's liability law, or general provisions for compensating injured employees; but it may not be delegated to the several states."

Thus twice frustrated in its efforts to protect stevedores and other maritime workers of fixed habitation, but encouraged by this court in the Dawson

decision to pass "a general employer's liability law" protecting stevedores and similarly situated maritime workers, Congress again went at its task, and in May, 1926 and June, 1926, there were introduced in Congress H. R. 12063 and S. 3170 each entitled "Longshoremen's and Harbor Workers Compensation Act." The report of the House Judiciary Committee on H. R. 12063 (69th Congress first session, Report No. 1190) and of the Senate Judiciary Committee on S. 3179 (69th Congress, first session Report No. 973) contain a short and simple history of the legal status of longshoremen as established in the *Jensen*, *Knickerbocker*, and *Dawson* cases, and point out that stevedores are at the present time without any legislative protection whatsoever as the result of the decisions of this Court and "recommends that this humanitarian legislation be speedily enacted into law so that this class of workers, practically the only class without the benefit of workmen's compensation, may be afforded this protection which has come to be almost universally recognized in the interest of the social justice between employer and employee."

All of this subsequent Congressional legislation must be considered as an aid to the interpretation of prior legislation on the same subject.

Tiger v. Western Investment Co., 221 U. S. 286;

U. S. v. Pitman, 147 U. S. 669;

Alexander v. Alexandria, 5 Cranch 1, 8.

The foregoing brief statement of the congressional legislation relating to seamen and stevedores, respectively, establishes the following:

(1) That Congress has legislated as to seamen for many decades and never legislated as to stevedores and other maritime workers until it became necessary to do so as the result of the decision of this Court in *Southern Pacific v. Jensen.* That decision did not require remedial legislation as to seamen, but did require it as to stevedores.

(2) That Congress has legislated for seamen and stevedores in separate statutes based upon a conception of the striking differences in their employments, to-wit, that stevedores and other maritime workers have a fixed location and residence on land, and ought therefore to be protected with legislation in the nature of workmen's compensation laws similarly to other land workers; whereas seamen, who are peripatetic in character, and who under the ancient rules of the admiralty law itself are entitled to compulsory compensation regardless of negligence to the extent of wages, care and cure, ought to have greater relief in the case of negligent injury.

(3) That Congress has always understood the word "seamen" in its ordinary well understood sense, *i. e.*, not to include stevedores.

II.

THE OPINION OF THE COURT OVERLOOKS THE ACCEPTANCE BY CONGRESS OF THE DECISION OF THE CIRCUIT COURT OF APPEALS DEFINING THE WORD "SEAMEN" TO EXCLUDE STEVEDORES.

La Follette Seamen's Act of 1915 was interpreted by the Circuit Court of Appeals in *The Hoquiam,* 253 Fed. 627 (Oct. 28, 1918) not to include stevedores.

Congress in the Act of 1920 accepted the definition by amending the Act of 1915, again using exactly the same word "seamen" without changing the judicial interpretation theretofore placed upon the statute.

Hence, according to the ordinary rule of statutory construction, often applied by this Court, the amended Act of 1920 must be construed in the light of the judicial construction originally placed upon it which Congress is presumed to have known and accepted, namely: that the term "merchant seamen" does not include stevedores.

B. & O. S. W. Ry. v. U. S., 220 U. S. 94 (Congress presumed to have adopted construction of lower federal courts);

Logan v. U. S., 144 U. S. 263, 301 (Congress presumed to have adopted construction of lower federal courts);

U. S. v. Falk, 204 U. S. 143 (Congress presumed to have adopted construction of attorney general);

Sewing Machine Company's Case, 18 Wall. 553;

III.

THE DECISION IN THIS CASE STRIKES THE WORD "ELECTION" FROM SECTION 33 OF THE MERCHANT MARINE ACT, AT LEAST AS TO STEVEDORES, AND THEREBY DEFEATS THE INTENT OF CONGRESS.

In *Panama R. R. Co. v. Johnson*, 264 U. S. 375, Section 33 of the Merchant Marine Act of 1920 was held valid solely because it gave a seaman the "election" between two systems of maritime law; that is,

either an election under the old rules consisting of wages to the end of the voyage, and maintenance and cure, or an election to proceed under the new rules imported into the admiralty law by the incorporation of the Federal Employers' Liability Act. That was the *sole basis* upon which the statute was sustained. The Court said in the *Panama* case (264 U. S. 375, pp. 388-9):

> "Rightly understood, the statute neither withdraws injuries to seamen from the reach and operation of the maritime law, nor enables the seamen to do so. On the contrary, it brings into that law new rules, drawn from another system, and *extends to injured seamen a right to invoke, at their election, either the relief accorded by the old rules, or that provided by the new rules.* The election is between alternatives accorded by the maritime law as modified, and not between that law and some non-maritime system."

And in *Engel v. Davenport*, U. S. Adv. Ops. 1925-6, p. 424, the action was founded by a *seaman* on the Merchant Marine Act of 1920, "in which the petitioner, instead of invoking as he might, the relief according to the old maritime rules, has elected to seek that provided by the new rules in an action at law based on negligence."

A stevedore has never had an "election" to proceed according to the "old rules" relating to a "seaman" and giving him "wages to the end of the voyage, and maintenance and cure for a reasonable time thereafter"; and, therefore, a stevedore has no "election" of substantive maritime theories of recovery under

Section 33 of the Merchant Marine Act. Thus under the construction given to Section 33 by the court in this case the word "election," at least in stevedoring and perhaps other cases, is entirely stricken out of the law. This result furnishes another illustration of the error of the court in this case because it is manifest that when Congress used the word "election" in Section 33, Congress intended to cover only persons who would have an "election" to proceed either under the old rules or the new rules of the maritime law, and not persons who had no "election" whatsoever, such as stevedores, boiler makers, dry dock workers, repair men, painters, plumbers and carpenters.

IV.

The Construction Placed Upon the Word "Seamen" by the Opinion of the Court Results in Ascribing to Congress an Intent to Discriminate Which It Cannot be Presumed Congress Ever Had, and Which is Contrary to Its Settled Practice.

The opinion rests upon the ground that the work of stevedores was in early times done by seamen and that the Court "cannot believe that Congress willingly would have allowed the protection to men engaged upon the same maritime duties to vary with the accident of their being employed by a stevedore rather than by the ship." It might be pointed out that the basic difference between a stevedore and a seaman is much greater than that recognized by the court in the foregoing language, and that basically

a stevedore and a seaman are engaged in entirely different employments, one having to do with the navigation of the ship and the other with its loading, and that the legal incidents, both rights and obligations, of these employments are entirely different. It has already been pointed out that Congress in legislating with reference to stevedores and seamen, respectively, has constantly borne in mind these basic differences. But passing by this observation, and assuming that the difference between a stevedore and a seamen is no greater than that pointed out in the opinion of the Court, and that therefore a stevedore can properly be included within the meaning of the word "seamen" by reason of the fact that anciently seamen did stevedores' work, what then of the dry dock workers, repairmen, boiler makers, upholsterers, plumbers, brass workers, painters, and carpenters who are also considered maritime workers when working on navigable waters, but are clearly not "seamen." Can it be assumed that Congress "willingly" included within the word "seamen" one class of workers who are not strictly seamen (such as stevedores) and "willingly" excluded other maritime workers who are not strictly "seamen" (such as repair men, boiler makers, dry dock workers, and the like)? The very fact that the construction adopted by the Court in this opinion would ascribe to Congress an intent to protect one class of maritime workers not strictly seamen, but to exclude another class of maritime workers not strictly seamen, shows that the construction is in itself a questionable one. The congressional legislation shows that with respect to maritime work-

ers other than seamen, Congress has always included all in the same legislation; and, therefore, to ascribe to Congress an intent to protect one class of maritime workers not strictly seamen but to exclude another class of maritime workers not strictly seamen is to ascribe to Congress an intention that Congress never had, and one that is contrary to its uniform practice with relation to the particular subject matter. If the court holds that Congress intended to include more in the word "seamen" than just merchant seamen in the ordinary and usual sense (which, as shown from the official reports of Congress itself, is the sense in which Congress has always understood it), then this Court must go the full distance and hold all maritime workers to be within the protection of the Seamen's Act even though they perform maritime duties which seamen never perform. If the Court should so hold, other remarkable consequences will follow which neither this Court nor any one else has ever anticipated.

V.

The Opinion of the Court Overlooks the Consequences of the Decision Announced, in That It Brings Death Actions of Stevedores Under the Merchant Marine Act of 1920, Contrary to the Received Opinion on That Subject.

The result of the decision in this case is that all death actions of stevedores, and possibly of repair men and other maritime workers who are not seamen, which have heretofore been brought under state death statutes supplementing the general maritime law under the rule of *Western Fuel Co. v. Garcia*, 257 U.

S. 233, have been erroneously brought. If the present opinion is correct, the supplement to the general maritime law in the form of state death statutes was superseded by the supervening uniform act of Congress in Section 33 of the Merchant Marine Act of 1920 (it has this effect as to seamen—*Engel v. Davenport*, U. S. Adv. Ops. 1925-6, p. 424). The result is that judgments in all such actions thus brought under state death statutes upon the assumption that there was no death act covering the case are erroneous, and that in many cases the statute of limitations prevents a new action being commenced under Section 33 of the Merchant Marine Act of 1920. The consequence is that the benevolent purpose of this Court in including stevedores within the meaning of the word "seamen" results in its becoming a "snare and a delusion."

Many death actions have been brought in the courts all over the United States for the death of stevedores and other maritime workers who are not seamen. They have been brought under state death statutes supplementing the maritime law under the doctrine of *Western Fuel Co. v. Garcia*, 253 U. S. 233. See, for example, the following:

Roswall v. Grays Harbor Stevedoring Co., 132 Wash. 274; 138 Wash. 390;

Dobrin v. Mallery S. S. Co., 298 Fed. 349;

Obrien v. Luckenbach S. S. Co. (C. C. A.), 293 Fed. 170;

Young v. The Clyde S. S. Co., 294 Fed. 549;

The Samnanger, 298 Fed. 620;

Groonstad v. Robins Dry Dock & Repair Co., 236 N. Y. 52;

Benedict, Admiralty (5th Ed.), Section 148, p. 214.

If the opinion of the Court in this case stands, all of the foregoing actions have been brought upon the wrong theory and without jurisdiction, since, Congress having occupied the field, the state death statutes in the maritime law are *functus officio* and courts were without jurisdiction to maintain actions under them.

Sherlock v. Alling, 93 U. S. 99, 104;

The Hamilton, 207 U. S. 398;

Cooley v. Port Wordens, 12 How. 299, 318;

Southern Pac. Co. v. Jensen, 244 U. S. 205, 216, 221.

In *Sherlock v. Alling*, 93 U. S. 99, upholding an action for a maritime death based on a state death statute, the court said:

> "Whatever, therefore, Congress determines, either as to a regulation or the liability for its infringement, *is exclusive of state authority.* But with reference to a great variety of matters touching the rights and liabilities of persons engaged in commerce, either as owners or navigators of vessels, the laws of Congress are silent, and the laws of the state govern. * * * Until Congress, therefore, makes some regulation touching the liability of parties for marine torts resulting in the death of the person injured, we are of the opinion that the statute of Indiana applies * * * "

It is established by *Southern Pacific v. Jensen* that the admiralty law is drawn from three sources:

1. Acts of Congress:

> "Congress has *paramount* power to fix and determine the maritime law that shall prevail throughout the whole country". (p. 216).

2. General Maritime law as accepted by the Federal Courts:

> "In the absence of some controlling statute of Congress, the general maritime law as accepted by the federal courts constitutes part of our national law, applicable to matters within the admiralty and maritime jurisdiction." (p. 216).

3. State statutes supplementing to some extent "the general maritime law as accepted by the federal courts (which is source No. 2), in the absence of some applicable act of Congress:

> "The general maritime law may be changed, modified or affected by state legislation. That this may be done to some extent cannot be denied * * * Equally well established is the rule that state statutes may not contravene an applicable act of Congress." (p. 216)

If this court adheres to the view of the present opinion, then Congress has occupied the field to the exclusion of state laws, and the decisions the country over in maritime death cases founded on state statutes are wrong and without jurisdiction, and all the courts and the whole maritime bar have all these years been in error.

VI.

The Opinion In This Case, If Adhered To, Results In an Overruling of Several Recent Decisions of This Court In Maritime Matters.

The opinion in the present case overlooks other consequences. If the decision in this case is correct in bringing personal injury and death actions of stevedores, and perhaps of other maritime workers, under the Merchant Marine Act of 1920, then Congress, having exercised its power, and thus having eliminated state laws from the field, exclusively occupies the field. This result requires the overruling of the following cases:

Miller Indemnity Underwriters Co. v. Braud, U. S. Adv. Ops. 1925-6, p. 211;

Grant Smith Porter Ship Co. v. Rohde, 257 U. S. 469.

These cases are predicated on state statutes supplementing the admiralty law in the absence of a supervening uniform act of Congress.

Sherlock v. Alling, 93 U. S. 99, 104;

Cooley v. Port Wardens, 12 How. 299;

Southern Pac. Co. v. Jensen, 244 U. S. 205, 216, 221.

If the decision in the present case is correct, then the many admiralty cases that have been decided in recent years on the theory of State statutes permissably supplementing the admiralty law in the absence of a supervening uniform act of Congress, *i. e.*, so long as Congress remains silent, have been erroneously decided because the fact has been com-

pletely overlooked that Congress has occupied the field to their exclusion.

VII.

THE OPINION OF THE COURT OVERLOOKS THE LANGUAGE AND EFFECT OF THE DECISION IN THE DAWSON CASE.

In *Washington v. Dawson*, 264 U. S. 219, the court said:

> "Without doubt Congress has power to alter, amend, or revise the maritime law by statutes of general application embodying its will and judgment. This power, we think, would permit enactment of a general employer's liability law, or general provisions for compensating injured employees; but it may not be delegated to the several states."

The *Dawson* case was argued on January 8, 1924, and decided February 25, 1924, and the foregoing language was used after *Panama R. R. Co. v. Johnson*, 264 U. S. 375, holding valid Section 33 of the Merchant Marine Act of 1920, had already been argued before this court. *Panama R. R. Co. v. Johnson* was argued December 7, 1923, one month before the *Dawson* case, and decided April 7, 1924. Since the court at the time of deciding the *Dawson* case, relating to stevedores had under consideration the Merchant Marine Act of 1920 relating to "merchant seamen," the statement in the *Dawson* case that the constitution gave Congress power which "would permit enactment of a general employer's liability law" for stevedores shows that this

court at the time of the *Dawson* case did not entertain the view that stevedores were included in the Merchant Marine Act of 1920 relating to merchant seamen. This must necessarily be true because, if the provisions of the seamen's act applied to stevedores, there was *already* "a general employees' liability law" in the field, and the decision in the *Dawson* case should have turned on how far Congress could let state laws apply in a field already exclusively occupied by Congress with a "general employers liability law."

VIII.

THE OPINION OF THE COURT OVERLOOKS THAT CONGRESS IN THE MERCHANT MARINE ACT OF 1920 EXPRESSLY MENTIONS BOTH "STEVEDORES" AND "SEAMEN" AND HENCE CANNOT BE PRESUMED TO HAVE USED THE WORD "SEAMEN" TO INCLUDE STEVEDORES.

The Merchant Marine Act of 1920 expressly mentions both stevedores and seamen. In Section 30 of the Act of 1920 the lien of "stevedores" is twice mentioned in express terms. Since Congress, therefore, in the same act expressly used both the term "stevedores" and the term "seamen," it is violating an elementary rule of construction to say that whenever Congress used the word "seamen" it intended to include therein "stevedores."

IX.

The Opinion of the Court Overlooks the Rule of Construction that Words and Phrases In a Statute Must Be Construed With Regard to the Statute As a Whole.

Probably no rule of statutory construction is better settled than that "a statute ought not to be expounded by detaching words and phrases but the whole act must be taken together and given a fair interpretation."

Gayler v. Wilder, 10 How. 477, 496;
U. S. v. Boisdore, 8 How. 113.

In construing a word, regard must be had to the statute as a whole and the general context. The construction given by the court to the word "seamen" in this opinion cannot in the nature of things be applicable to the word "seamen" wherever used elsewhere in the Merchant Marine Act of 1920 or in the La Follette Seamen's Act of 1915 which it amends, which relates to "seamen's" wages, hours of labor, food, flogging, and the like. Therefore, since the word "seamen" as used in the other sections of the Merchant Marine Act of 1920 cannot possibly be construed to include stevedores, the ordinary well understood meaning must be given to the word "seamen" in Section 33 because Congress is presumed to have intended to use words harmoniously throughout the entire act.

X.

THE OPINION OF THE COURT OVERLOOKS THE RULE OF CONSTRUCTION THAT WORDS MUST BE GIVEN THEIR ORDINARY MEANING.

Congress is presumed to have intended to use language in its ordinary meaning unless it would manifestly defeat the object of its provision.

Minor v. Mechanics Bank, 1 Pet. 46.

A statute should be read according to the nature and obvious import of its language, without resorting to subtle and enforced construction for the purpose of either limiting or extending its operations; and when the language is plain, words and phrases should not be inserted so as to incorporate in the statute a new and distinct provision.

U. S. v. Temple, 105 U. S. 97;
Maillard v. Lawrence, 16 How. 251, 261;
U. S. v. Salen, 235 U. S. 237.

In the course of judicial decision of many decades the word "seamen" has acquired a well understood and well settled meaning, to-wit, persons who sign the articles, serve aboard ship, and assist in navigation.

Gonzales v. U. S. E. F. Corp., 3 Fed. (2d) 168;
Young v. Clyde S. S. Co., 294 Fed. 549;
The Chicago, 235 Fed. 538;
The Buena Ventura, 243 Fed. 798.

In *Gonzales v. U. S. E. F. Corp.*, 3 Fed. (2d) 168, the Court, said:

> "The Standard Dictionary defines a 'seaman' as 'one not an officer who takes part in the practical navigation of the vessel—sailor.' It defines

> a 'sailor' as 'one whose occupation is to aid in navigating vessels, especially one of the crew'."

In *Young v. Clyde S. S. Co.*, 294 Fed. 549, the Court said:

> "Plaintiff's deceased husband was generally employed as a laborer and had not signed as a seaman on the articles or engaged in navigation."

In *O'Hara v. Luckenbach S. S. Co.*, U. S. Adv. Ops. 1925-6, p. 160, a case arising under the Seamen's Act of 1915, the Court said (p. 163):

> "In this conclusion we are fortified by the consideration that the legislation deals with seamen and the merchant marine and, consequently, the phrase * * * is to be given the meaning which it had acquired in the language and usages of the trade to which the act relates, in accordance with the rule stated in *Unwin v. Hanson* (1891), 2 Q. B. 115, 119: 'If the Act is one passed with reference to a particular trade, business, or transaction, and words are used which everybody conversant with that trade, business, or transaction knows and understands to have a particular meaning in it, then the words are to be construed as having that particular meaning, though it may differ from the common or ordinary meaning of the words'."

The opinion of the Court in this case, though recognizing that "as the word is commonly used, stevedores are not 'seamen' " stretches the meaning of the word seamen without regard to the context in which it is used and without regard to its ordinary and received meaning, and without regard to the real intent of Congress as often expressed.

XI.

THE OPINION OF THE COURT OVERLOOKS, WITHOUT DISCUSSION, UNIFORM CONTRARY DECISIONS OF THE FEDERAL COURTS.

The following cases are uniformly contrary to the opinion of the Court in this case:

Cassil v. U. S. Emergency Fleet Corp. (C. C. A.), 289 Fed. 774;

The Hoquiam (C. C. A.), 253 Fed. 627;

Young v. Clyde S. S. Co. (D. C.), 294 Fed. 549;

Grimberg v. Admiral Oriental Line, 300 Fed. 619;

Johnson v. American-Hawaiian S. S. Co., 14 Fed. (2d) 534:

The Steel Age (1923), A. M. C. 348;

Carstensen v. Hammond Lumber Co., 11 Fed. (2d) 142;

Martis v. Union Transfer Co., 202 N. Y. Sup. 56 (App. Div.).

We recognize that the decisions of the lower courts are not binding upon this Court, but a uniform contrary opinion in cases where the question was fully argued and presented is always entitled to considerable weight. The foregoing cases on the precise question involved, as well as the death cases of stevedores and other maritime workers, and other cases where state statutes have been permitted to supplement the admiralty law in the absence of a supervening uniform act of Congress, indicate that it has been the uniform opinion of the courts all over the United States, as well as of the maritime bar, that steve-

dores cannot and were not intended to be included by Congress within the scope of Section 33 of the Merchant Marine Act of 1920. (See "Longshoremen and Accident Compensation," by Lindley M. Clark, 1926 A. M. C. 1488. See also Andrew Furseth, "Harbor Workers are not Seamen," 11 Am. Labor Leg. Rev. 139; T. V. O'Connor, "The Plight of Longshoremen," 11 Am. Labor Leg. Rev., p. 146.) The last two articles were cited by Mr. Justice Brandeis in his dissent in *Washington v. Dawson & Co.*, 264 U. S. 219, 237.

XII.

The Opinion of the Court is Rested Upon a Point That Developed During the Oral Argument and Was Merely Mentioned in the Written Brief of the Respondent.

The respondent in his brief of forty-five pages pays but scant attention to the Merchant Marine Act of 1920, to-wit, two pages (Respondent's Brief, pp. 42-43). He had been defeated below on this point, recognized the uniform current of decision against him, and had little faith in the point, being himself of the opinion, voiced at the trial, that "a stevedore is not a seaman" (R. 150). As a matter of fact, the respondent did not argue that the Merchant Marine Act expressly covered the case of stevedores, but that since Congress abolished the fellow servant rule as to railroad employees and since the Jones Act abolishes the fellow servant rule as to "seamen" by importing the provisions of the Federal Employers' Liability Act, the public policy of the law has been so changed as to require this Court, even in the absence

of a statute, to wipe out the fellow servant doctrine as an original maritime rule in the case of maritime employees who are not "seamen," to-wit, stevedores—that being the only remaining narrow field for the operation of the rule.

A decision of such momentous consequence as the decision in this case, based as it is upon a theory largely developed by the members of the Court during the course of the oral argument, and overlooking the long line of uniformly contrary decisions of the lower Federal courts, as well as the expressed intent of Congress, ought of right be heard again in order that the precise ground of the decision may be fully reconsidered in all its aspects and in all its consequences and in the light of the clear intent of Congress and of the rules of construction that have been settled for centuries.

CONCLUSION

Until the present decision the law relating to stevedores and other similar maritime workers was quite well defined. The opinion of the Court as now written has amazed the bar the country over, and thrown new confusion into the field, and has again opened the flood gates of litigation to determine the innumerable problems which now arise as the result of the interpretation laid down by the Court in this decision. For example, will longshoremen and their employers be invested with all the duties and obligations now incident with the relation of ship owner

and a seaman? That is, has a longshoreman also an "election" under the old rules of the maritime law so as to give him, a landsman, "wages to the end of the voyage," and maintenance, and cure? Will other maritime workers besides longshoremen, such as boiler markers, repair men, dry dock workers, watchman, painters, plumbers, upholsterers and carpenters be included within the scope of the word "seamen" and have their rights determined under the Merchant Marine Act? Have they too an "election" under the old rules of the maritime law giving them "wages to the end of the voyage" and maintenance, and cure?

For the foregoing reasons your petitioner prays this Honorable Court that a rehearing may be granted in the above entitled cause in order that the doctrine laid down in the opinion may be re-examined in the light of the expressed intent of Congress, the settled rules of construction, and the necessary consequences of the decision.

If error has been committed, the time to correct it is now, before the decision in this case becomes final. If the question is re-examined now, much expensive future litigation may be avoided. If not, uncertainty and chaos will prevail until by a long process of adjudication this court has again defined the lines which are now all but obliterated. In the meantime, the burden of expensive litigation placed upon shipowners, maritime employers, and workmen, by virtue of the uncertainty of the law, will be virtually disastrous.

"The preservation of sound legal principles is of

paramount importance. Time may cure financial hurt to the individual, but an erroneous declaration of the legal principle, or its misapplication, by a court of last resort, is a harm that time will not heal; it but intensifies the wrong. Under our judicial system a bad precedent, or a judgment ill-pronounced, does not die with its pronouncement, but lives to touch and tarnish the entire current of the law."

Respectfully submitted,

STEPHEN V. CAREY,
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ALFRED J. SCHWEPPE,
Attorneys and Counsel for Petitioner.

APPENDIX

Supreme Court of the United States

No. 236.—October Term, 1926

International Stevedoring Company, Petitioner, vs. R. Haverty.	On Writ of Certiorari to the Supreme Court of the State of Washington.

[October 18, 1926.]

Mr. Justice Holmes delivered the opinion of the Court.

This is an action brought in a State Court seeking a common law remedy for personal injuries sustained by the plaintiff, the respondent here, upon a vessel at dock in the harbor of Seattle. The plaintiff was a longshoreman engaged in stowing freight in the hold. Through the negligence of the hatch tender no warning was given that a load of freight was about to be lowered, and when the load came down the plaintiff was badly hurt. The plaintiff and the hatch tender both were employed by the defendant stevedore, the petitioner here, and the defendant

asked for a ruling that they were fellow servants and that therefore the plaintiff could not recover. The Court ruled that if the failure of the hatch tender to give a signal was the proximate cause of the injury the verdict must be for the plaintiff. A verdict was found for him and a judgment on the verdict was affirmed by the Supreme Court of the State. 134 Wash. 235, 245. A writ of certiorari was granted by this Court. 269 U. S. 549.

The petitioner argues that the case is governed by the admiralty law; that the admiralty law has taken up the common law doctrine as to fellow servants, and that by the common law the plaintiff would have no case. Whether this last proposition is true we do not decide. The plaintiff cites a number of decisions of which it is enough to mention *The Hoquiam*, 253 Fed. Rep. 627, and *Cassil v. United States Emergency Fleet Corporation*, 289 Fed. Rep. 774. It also refers to an intimation of this Court that whether the established doctrine be good or bad it is not open to courts to do away with it upon their personal notions of what is expedient. It is open to Congress, however, to change the rule and in our opinion it has done so. By the Act of June 5, 1920, c. 250 § 20; 41 Stat. 988, 1007, "any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply." It is not disputed that the statutes do way with the

fellow servant rule in the case of personal injuries to railway employees. *Second Employers' Liability Cases*, 223 U. S. 1, 49. The question therefore is how far the Act of 1920 should be taken to extend.

It is true that for most purposes, as the word is commonly used, stevedores are not "seamen." But words are flexible. The work upon which the plaintiff was engaged was a maritime service formerly rendered by the ship's crew. *Atlantic Transport Co. v. Imbrovek*, 234 U. S. 52, 62. We cannot believe that Congress willingly would have allowed the protection to men engaged upon the same maritime duties to vary with the accident of their being employed by a stevedore rather than by the ship. The policy of the statute is directed to the safety of the men and to treating compensation for injuries to them as properly part of the cost of the business. If they should be protected in the one case they should be in the other. In view of the broad field in which Congress has disapproved and changed the rule introduced into the common law within less than a century, we are of opinion that a wider scope should be given to the words of the act, and that in this statute "seamen" is to be taken to include stevedores engaged as the plaintiff was, whatever it might mean in laws of a different kind.

Judgment affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.